

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivisions First and Twenty-fourth of section 171, subdivision (1) of section 1142, and section 1250 (not subdivided) of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the Sales and Use Taxes Regulations, as published in Subchapter A of Chapter IV and the Communications of the Division of Taxation of the Department of Taxation and Finance Regulations, as published in Chapter VI of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Paragraph (2) of subdivision (b) of section 536.2 of the regulations is amended to read as follows:

(2) Types of authority. In determining whether there is substantial authority (other than in cases described in paragraph (4) of this subdivision), only the following will be considered authority: applicable provisions of the Tax Law and other statutory provisions; regulations of the Commissioner of Taxation and Finance and regulations proposed by the Commissioner of Taxation and Finance construing such law; court cases; administrative pronouncements (including [Taxpayer Services Bureau Memoranda] technical memoranda); Tax Department and other official explanation of such law and regulations; and legislative intent as reflected in bill memoranda. Conclusions reached in [treaties] treatises, legal periodicals, legal opinions or opinions rendered by other tax professionals, and descriptions of statutes prepared after enactment are not authority. The authorities underlying such expressions of opinion, where applicable to the facts of a particular case, however, may give rise to substantial authority for the tax treatment of an item.

Section 2. Paragraph (1) of subdivision (a) of section 2375.1 is amended to read as follows:

(1) The Division of Taxation of the Department of Taxation and Finance communicates tax policy and interpretations to taxpayers, tax practitioners, personnel of the [department] division and members of the general public by various methods and resources, including the department's Web site. The provisions of this Part summarize these methods and explain the legal force and effect, precedential value and binding nature of each such method. Regardless of the method by which a tax policy or interpretation is communicated, the division may, at any time, reassess a matter and change its policy or an interpretation by amending the vehicle by which such policy or interpretation was communicated or by a pronouncement having a greater force and effect. Generally, such a change in tax policy or interpretation will operate prospectively.

Section 3. Paragraph 4 of subdivision (b) of section 2375.1 is amended to read as follows:

(4) "Related statute" means any local law, ordinance or resolution enacted pursuant to the authority of the Tax Law [or article 2-E of the General City Law,] which imposes a tax or taxes administered by the Commissioner of Taxation and Finance[; and also includes section 27-0923 of the Environmental Conservation Law and those provisions of the Racing, Pari-Mutuel Wagering and Breeding Law which imposes taxes] or any other law administered by the commissioner. Any reference to tax or taxes in this Part shall include special assessments, fees or other impositions which are administered by the Commissioner of Taxation and Finance.

Section 4. Clauses (b), (c) and (d) of subparagraph (i) of paragraph (2) of subdivision (a) of section 2375.3 are amended to read as follow:

"(b)" a request for a conciliation conference and issuance of a conciliation order by the division's Bureau of Conciliation and Mediation Services pursuant to Part 4000 of this Title; or

"(c)" a petition for an advisory opinion by the commissioner pursuant to Part 2376 of this Title[; or

"(d)" a request for an opinion of counsel pursuant to section 2375.4 of this Part].

Section 5. Subdivision (c) of section 2375.3 is amended to read as follows:

(c) “Force and effect.” Declaratory rulings do not have the force and effect of law or regulation, but may be cited as precedent in establishing the Commissioner of Taxation and Finance’s official position with respect to any matter involving the division, if not changed, altered or set aside as provided herein. The division and the commissioner will be bound by the conclusions stated in any declaratory ruling (including declaratory rulings promulgated prior to September 1, 1987 by the State Tax Commission), unless the ruling is changed prospectively by either the promulgation of an amendment to such declaratory ruling or the adoption of a division regulation, or unless the ruling is altered or set aside by the [Division of] Tax Appeals Tribunal (see, however, section 2375.1(a)(2) of this Part), a court of competent jurisdiction or duly enacted legislation. A declaratory ruling is subject to direct review as provided in section 204 of the State Administrative Procedure Act. A taxpayer or other person will not be bound by a declaratory ruling nor may the division retroactively change a valid declaratory ruling or the conclusions stated in such ruling.

Section 6. Section 2375.4 is repealed.

Section 7. Section 2375.5 is amended to read as follows:

Section 2375.5 Advisory opinions (TSB-As).

Advisory opinions are authorized by subdivision twenty-four of section 171 of the Tax Law and are addressed in detail in Part 2376 of this Title. Advisory opinions are binding upon the Division of Taxation and upon the Commissioner of Taxation and Finance only with respect to the person to whom such an opinion is rendered and only with respect to the set of facts stated in the opinion. The person to whom an advisory opinion is rendered is not bound by that opinion nor may any other person rely upon or be bound by such opinion. However, although advisory opinions do not have true precedential value, they are indicative of the commissioner’s position concerning the applicability of statutory and regulatory provisions to specific sets of facts as of the date the opinion is issued or for the specific time period at issue in the opinion.

Section 8. Section 2375.6 is amended to read as follows:

Section 2375.6 Technical [Services Bureau] memoranda (TSB-Ms).

(a) “General.” (1) Technical [Services Bureau] memoranda are informational statements of the Division of Taxation’s policies. Where practicable, such memoranda are written in nontechnical language. They are intended:

(i) to advise and inform taxpayers, tax practitioners, personnel of the [department] division and members of the general public of the division’s existing interpretations of provisions of the Tax Law, related statutes and regulations adopted thereunder; and

(ii) to alert such taxpayers and other persons to changes in such interpretations, laws or regulations or to significant Tax Appeals Tribunal or [court] judicial decisions.

Technical [Services Bureau] memoranda generally address distinct statutory or regulatory provisions or distinct issues. For example, a [Technical Services Bureau] technical memorandum might provide detailed guidance for a specific circumstance that, based on experience, requires a more detailed articulation of a general principle set forth in the law or regulations. Technical [Services Bureau] memoranda are primarily designed to keep taxpayers and other interested persons informed and to ensure consistent understandings throughout the division.

(2) Technical [Services Bureau] memoranda are subject to the provisions of subdivision twenty-three of section 171 of the Tax Law. Pursuant to such subdivision, [Technical Services Bureau] technical memoranda will in no event be issued by the division in violation of the provisions of the State Administrative Procedure Act where duly promulgated regulations would be required. [Moreover, as provided in such subdivision, opinions of counsel that are deemed to be of sufficient significance and general applicability will be disseminated as Technical Services Bureau memoranda. See section 2375.4 of this Part for rules concerning opinions of counsel.]

(b) “Dissemination [and modification].” [(1)] Technical [Services Bureau] memoranda are initiated by the division or the commissioner, published by the [division’s Technical Services Bureau] division and widely disseminated. These memoranda are [mailed] provided to all taxpayers and tax practitioners who have requested to be included on the [Technical Services Bureau] technical memoranda [mailing] notification list. In addition, the division [mails Technical Services Bureau] provides technical memoranda upon individual request and to targeted groups who may be interested in such memoranda. Technical [Services Bureau] memoranda are also distributed, or otherwise made available, to all personnel of the [department] division and are available on the department’s Web site.

[(2) Technical Services Bureau memoranda may be modified either retroactively or prospectively. As a general rule, Technical Services Bureau memoranda will not be modified on a retroactive basis where such modifications would result in adverse tax consequences to taxpayers. However, as in the case of opinions of counsel, taxpayers, tax practitioners and members of the general public are cautioned that since Technical Services Bureau memoranda can be changed, absolute reliance may not be placed on such memoranda.]

(c) “Force and effect.” Technical [Services Bureau] memoranda are advisory in nature and fall within the exclusions from the rule making procedure imposed by the State Administrative Procedure Act. That is, these statements in themselves have no legal effect but are merely explanatory (see also, section 2375.2(b)(2) of this Part). Accordingly, [Technical Services Bureau] technical memoranda do not have legal force or effect, do not set precedent and are not binding. However, it is well established that there is a need for administrative agencies such as the division to publicize information concerning the laws and regulations that they administer and enforce. [It is also recognized that the rule making procedure prescribed in the State Administrative Procedure Act is both time consuming and complicated, which is appropriate when “law” is being made but of limited utility in relation to the simple exposition of the current thinking of the division.] To the extent that [Technical Services Bureau] technical memoranda are reasonable and consistent with the governing laws and

regulations, these vehicles for informing taxpayers and others are and should be employed by such persons to assist them in understanding the law and regulations and acting accordingly. Technical memoranda are current as of the date issued. Subsequent judicial decisions, Tax Appeals Tribunal decisions, or changes in the law, regulations, or division policies could affect the validity of the information presented in a technical memoranda. Technical memoranda are not generally modified, but are retained to indicate the division's policies at the time of issuance.

Section 9. Section 2375.7 is repealed and a new section 2375.7 is added to read as follows:

Section 2375.7 New York tax guidances (NYT-Gs).

(a) "General." (1) New York tax guidances are informational statements of the division's interpretation of the Tax Law and regulations and are based on a particular set of facts. Tax guidances consist of redacted versions of selected letters and memoranda and responses to withdrawn petitions for advisory opinion.

(2) New York tax guidances are accurate on the date they are issued and are limited to the facts set forth therein. A tax guidance is based on the statutes, regulations, and judicial and Tax Appeals Tribunal precedent in effect on the date the tax guidance is issued or in effect for the specific time period at issue in the tax guidance. Any changes in these legal authorities or in division policies after the date the tax guidance is issued may affect the conclusions stated therein.

(b) "Dissemination." New York tax guidances are published by the division and widely disseminated. Tax guidances are provided to all taxpayers and tax practitioners who have requested to be notified when a tax guidance is issued. Tax guidances are distributed, or otherwise made available, to all personnel of the division and are available on the department's Web site.

(c) "Force and effect." New York tax guidances are advisory in nature and are merely explanatory. Accordingly, tax guidances do not have legal force or effect, do not set precedent, and are not binding. They

are vehicles to assist taxpayers and others to understand the law and regulations and promote voluntary compliance. New York tax guidances are current as of the date issued. Subsequent judicial decisions, Tax Appeals Tribunal decisions, or changes in the law, regulations, or division policies could affect the validity of the information presented in a New York tax guidance. New York tax guidances are not generally modified, but are retained to indicate the division's policies at the time of issuance.

Section 10. Subdivisions (b) and (c) of section 2375.8 are amended to read as follows:

(b) "Dissemination." Generally, forms and instructions for use by taxpayers are distributed regularly by the division [through direct mailings] and are available on the department's Web site. Such forms and instructions are also available upon individual requests. Failure on the part of any taxpayer to receive the necessary forms and instructions will not excuse the taxpayer from the obligation to timely comply with the Tax Law, related statutes and regulations thereunder. Certain widely used forms and instructions [are also] may be provided by the division in bulk to various institutions (such as banks, libraries and post offices) and tax practitioners for dissemination to the public. The forms and instructions that constitute the administrative documents that are issued by the division are [mailed] provided to affected taxpayers, when appropriate, in accordance with the applicable provisions of the Tax Law, related statutes and regulations thereunder.

(c) "Force and effect." [Forms and instructions in themselves have no legal effect, unless such effect is specifically provided for by law. However, all] All forms and instructions of the division directly reflect the provisions of the underlying laws and regulations. However, forms and instructions in themselves have no legal effect, unless such effect is specifically provided for by law.

Section 11. Section 2375.9 is amended to read as follows:

Section 2375.9 Publications[and], notices, and online tax information.

(a) "General." The Division of Taxation issues a variety of publications and notices usually designated as such, that address rights and responsibilities under the Tax Law, related statutes and regulations adopted

pursuant thereto. For the most part, publications are detailed booklets or pamphlets that are directed at specific matters or industries. The division's publications commonly contain comprehensive narratives, examples, questions and answers, charts, sample forms and instructions, technical details such as magnetic media specifications, or related communications. Notices, on the other hand, are concise, topical announcements that are issue specific. [These] In addition, the division provides online tax information on the department's Web site. The publications[and], notices, and online tax information are informational in character and are primarily intended to enhance compliance through education. [They are less formal than the methods of communication previously described in this Part and often contain specificity that would not be appropriate for such other methods of communication.]

(b) "Dissemination and modification." Publications[and, particularly], notices, and online tax information are the most efficient methods the division has of timely disseminating written information to similarly situated taxpayers. They are [mailed] provided to targeted groups and also made available to [department] division personnel and to anyone else upon their request and are available on the department's Web site. Publications and online tax information are regularly updated, whereas notices are seldom modified because of their impermanence.

(c) "Force and effect." The division's publications[and], notices, and online tax information in themselves do not have any legal effect. This notwithstanding, [these] publications[and], notices, and online tax information serve an essential role in expeditiously conveying pertinent information to taxpayers, tax practitioners, personnel of the [department] division and members of the general public. As is the case with [the more formal Technical Services Bureau] technical memoranda described in section 2375.6 of this Part, to the extent that the division's publications[and], notices, and online tax information are reasonable and consistent with the governing laws and regulations, they cannot be ignored without risking the violation of such laws and regulations.

Section 12. Section 2375.10 is amended to read as follows:

Section 2375.10 Newsletters and press releases.

The Division of Taxation [periodically publishes] may publish newsletters and [furnishes] furnish the news media with press releases to make information concerning the Tax Law, related statutes and regulations adopted thereunder readily accessible to taxpayers, tax practitioners, personnel of the [department] division and members of the general public. Press releases, in particular, provide a key means of alerting such persons to important tax matters. Newsletters and press releases are available on the department's Web site. Because the newsletters and press releases of the division are exclusively of an informational character, they have no legal force or effect, precedential value or binding nature.

Section 13. Section 2375.11 is amended to read as follows:

Section 2375.11 Correspondence and oral communications.

Personnel of the Division of Taxation, at all levels, personally communicate tax policy and interpretations to thousands of taxpayers, tax practitioners and members of the general public each year. These communications take many forms, such as letters, electronic mail, questionnaires, facsimile transmissions (FAX), telephone conversations, conferences, news media appearances and other speaking engagements. (The division's personnel also file papers and present oral arguments, or assist in such acts, in connection with administrative and judicial tax proceedings; however, such specialized communications are not within the scope of this Part.) The correspondence and oral communications of the personnel of the division, in themselves, are considered to be advisory only. They do not have legal force or effect, precedential value or a binding nature. However, these methods of communication are the basic tools by which personnel of the division interact with others and advise others as to their rights and responsibilities under the Tax Law, related statutes and regulations adopted pursuant thereto. (See article 41 of the Tax Law for taxpayers' rights concerning written and oral communications with the division.)

Section 14. Section 2376.1 is amended to read as follows:

Section 2376.1 General.

(a) “Definition and nature of advisory opinions.” An advisory opinion is a written statement, issued pursuant to the provisions of this Part, [setting forth the applicability to a specified set of facts of] applying the pertinent statutory and regulatory provisions [relating to] of a tax administered by the Commissioner of Taxation and Finance to a specific set of facts. Advisory opinions are issued at the request of any person who is or may be subject to a tax or liability under the Tax Law or claiming exemption from such a tax or liability, and are binding upon the commissioner [with respect to] for that person only. Advisory opinions may, in the discretion of the commissioner, be issued to any non-taxpayer, including but not limited to a local official, petitioning on behalf of a local jurisdiction, [or] and the head of a State agency, petitioning on behalf of the agency. Advisory opinions will not be issued to any person or entity acting on behalf of an unidentified or hypothetical person or entity. Advisory opinions are issued on behalf of the commissioner [by the Director of the Taxpayer Services Division, or] by [such other] any person to whom the commissioner delegates this authority.

(b) “[Areas in] Subjects on which advisory opinions may be requested.” A petitioner may request an advisory opinion [relating to] about any tax or program administered by the commissioner. [These] Taxes include not only [the taxes] those imposed under the Tax Law, but various other taxes, such as New York City's Personal Income Tax on Residents, [its Earnings Tax on Nonresidents, and] the City of Yonkers' Income Tax Surcharge on Residents and [its] the City of Yonkers' Earnings Tax on Nonresidents, as well as the sales and use taxes imposed by various localities throughout the State. The School Tax Relief (STAR) rebate program is an example of a program administered by the commissioner. An advisory opinion may be [sought with respect to] requested about a substantive question, such as whether a specific transaction gives rise to a tax liability, or a procedural one, such as whether withholding of income tax is required under specified circumstances. Advisory

opinions may be requested [with respect to] about questions arising in the course of an audit or an examination of a tax return, or [with respect to] about questions relating to a taxpayer's claim for refund, credit or reimbursement. [Advisory opinions] They may also be [utilized for purposes of tax planning. Thus, they may be] requested [with respect to] about a hypothetical or projected future set of facts.

(c) (1) An advisory opinion will not be issued where the petition for advisory opinion relates to a pending question raised by the petitioner in:

(i) a petition for a decision or determination by the Division of Tax Appeals pursuant to Part 3000 of this Title, or any appeals therefrom;

(ii) a request for a conciliation conference and issuance of a conciliation order by the Division of Taxation's Bureau of Conciliation and Mediation Services pursuant to Part 4000 of this Title, unless all of the parties to the conciliation conference consent to the issuance of an advisory opinion; or

(iii) a petition for a declaratory ruling by the commissioner pursuant to section 2375.3 of this Title[; or

(iv) a request for an opinion of counsel pursuant to section 2375.4 of this Title].

(2) [Where the question raised in a petition for advisory opinion relates to an issue for which a statutory notice has been issued and the petition for advisory opinion is filed subsequent to the issuance of such statutory notice, the filing of the petition for advisory opinion will not stay the time period for filing a petition for a decision or determination or requesting a conciliation conference as described in subparagraphs (1) (i) and (ii) of this subdivision.] An advisory opinion will not be issued about a matter for which a statutory notice has been issued when the petition for advisory opinion is filed after the issuance of the statutory notice and the time period for filing a petition for a decision or determination or requesting a conciliation conference as described in subparagraphs (1)(i) and (ii) of this subdivision is still open or any proceeding commenced by the petitioner regarding the statutory notice is still pending, except as provided in subparagraph (ii) of paragraph (1) of this subdivision. The term "statutory notice" means any written notice of the commissioner [which] that advises a

person of a tax deficiency, determination of tax due, assessment, or denial of a refund, credit or reimbursement application, or of cancellation, revocation, suspension or denial of an application for a license, permit or registration, where [such] that notice gives the person a right to a hearing in the Division of Tax Appeals.

(3) A [person shall not be precluded from withdrawing] petitioner may withdraw a [given request or] petition and timely [utilizing] use an alternative procedure. Draft advisory opinions prepared in response to petitions that are withdrawn may be published as New York tax guidances when, in the opinion of the commissioner, publication would provide guidance to other similarly situated taxpayers (see section 2375.7 of Part 2375).

(4) The petitioner may elect to reserve the right to apply for the Voluntary Disclosure and Compliance (VDC) program pursuant to Tax Law section 1700 with respect to the subject of the advisory opinion request when submitting a petition for an advisory opinion. If an audit or investigation begins while a petition for Advisory Opinion is under consideration, the electing petitioner will not be prohibited from participating in the VDC program with regard to the subject of the advisory opinion, however, the audit or investigation will proceed. If the electing petitioner chooses to participate in the VDC program by then submitting an application, the department will extend to that petitioner the benefits of the VDC program as long as the petitioner meets all other qualifications for the program.

Section 15. Subdivision (a) of section 2376.2 is amended to read as follows:

(a) “General.” Petitions for advisory opinions must be made on the form prescribed [therefor] by the Commissioner of Taxation and Finance or on a submission [which] that contains the same information as the prescribed form and [which] that is specifically designated as a petition for an advisory opinion. The petition should be typewritten, if possible, but handwritten petitions will be accepted. The petition should set forth the specific set of facts to which the request for the advisory opinion relates, the exact issue sought to be resolved and the petitioner’s reasons for requesting the advisory opinion. The petition may include a presentation of the

petitioner's contentions [as to] about the appropriate resolution of the issue raised in the petition, [together with] and any supporting arguments and citations of pertinent law or regulations. The petitioner must indicate in the petition whether the request relates to any matter [presently] currently under audit, to a claim for credit, refund or reimbursement, to a proceeding commenced under Part 3000 or Part 4000 of this Title, to a pending judicial action or proceeding, to an issued statutory notice, to [an application] a petition for a declaratory ruling [or opinion of counsel], or to any other matter or proceeding [with which] involving the commissioner or the Division of Tax Appeals [is involved]. [A] The petition [for an advisory opinion] must be submitted to the address [as indicated on] provided in the instructions to the petition for advisory opinion form. The commissioner may allow the petition to be submitted electronically.

Section 16. Paragraphs (3) and (4) of subdivision (b) of section 2376.2 are amended to read as follows:

(3) Any of the following may file a petition for advisory opinion on behalf of another individual, a local jurisdiction, a State agency or a business entity if authorized by a power of attorney signed by such individual, a local official on behalf of the local jurisdiction, the head of the State agency on behalf of the agency, a member of a partnership or an officer of a corporation, where [such] the power of attorney is filed with the commissioner before or concurrently with the filing of the petition for advisory opinion:

(i) an attorney-at-law licensed to practice in New York State;

(ii) a certified public accountant duly qualified to practice in New York State;

(iii) a public accountant enrolled with the New York State Education Department under article 149 of the Education Law;

(iv) an attorney-at-law or accountant duly authorized to practice in any other state[, who prepared the petitioner's return for the year to which the petition relates or the petitioner's claim for refund or reimbursement of tax paid for such year];

(v) a person admitted to practice before the Internal Revenue Service or before the Tax Court of the United States; and

(vi) the petitioner's spouse, child or parent.

(4) No person other than those described in [the foregoing subparagraphs of paragraph (3) of] this subdivision may file a petition for advisory opinion on behalf of another except by special permission of the commissioner. A request for [such] permission [shall] must be made in writing [addressed] to [:

Secretary to the Commissioner of Taxation and Finance

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Albany, NY 12227] the address provided in the instructions to the petition for advisory opinion form.

Section 17. Paragraphs (6) and (8) of subdivision (c) of section 2376.2 are amended to read as follows:

(6) a statement [as to] about whether any issue [related] identified in the petition for advisory opinion is related to an audit or examination of any return of the petitioner, a claim for refund, credit or reimbursement, a proceeding commenced under Part 3000 or Part 4000 of this Title, a pending judicial action or proceeding, to an issued statutory notice, to [an application] a petition for a declaratory ruling [or opinion of counsel] filed pursuant to [sections] section 2375.3 [and 2375.4, respectively,] of this Title, or any other matter or proceeding [with which] involving the commissioner or the Division of Tax Appeals [is involved];

(8) an identifying number or numbers as prescribed by the commissioner in the form of social security numbers, employer identification numbers or other [numeric designations suitable for proper identification of the petition, which] numbers that are deemed necessary [by the commissioner] for the proper enforcement of the Tax Law and [shall] will be used for tax administration purposes only; and

Section 18. Section 2376.3 is amended to read as follows:

2376.3 Procedure [subsequent to] after the filing of a petition for advisory opinion.

(a) If the [department] division determines that a petition for advisory opinion is not complete, [notice will be sent to] the petitioner [advising the petitioner] will be notified of the nature of the petition's defects. The petitioner may then revise and resubmit the petition. The time within which an advisory opinion must be issued [shall] will start to run from the date of receipt of a complete petition for advisory opinion. If the notice to petitioner indicates that the petition has been deemed defective by virtue of a statement of facts that is unclear, incomplete, or insufficient to permit an opinion to be rendered, the petitioner has 30 calendar days from the date of the notice to provide the requested information, unless an extension of time is granted. If the department does not receive the requested information by the time it is due, the petition will be considered to be withdrawn.

(b) In addition, the Division of Taxation's Audit Division [of the department] will review the petition and may prepare a statement indicating that it disagrees with the petitioner's description of [existing] the facts [or contentions regarding the application of statutory provisions or regulations to the set of facts specified in the petition]. The [department] division will [forward the statement to] notify the petitioner [who] of the Audit Division's disagreement and the petitioner may submit a reply thereto within [10] 30 days of receipt. The time to file such reply may be extended upon request of the petitioner. The petitioner may submit further statements during the course of the [department's] division's consideration of the petition for advisory opinion. In each such instance the Audit Division may prepare a comment [which the department will forward to the petitioner,]. The division will notify the petitioner and the petitioner will be afforded an opportunity to submit a reply [to such comment] in the same manner as that described above. Any additional submission by the petitioner will be deemed a modification of the petition and the period within which an advisory opinion must be issued [shall] will begin to run anew from the date [of receipt thereof] the additional information is received.

(c) "Conferences." If the [department] division determines that a conference with the petitioner would be useful, a conference will be arranged, by telephone if possible, in such a manner as to cause the petitioner the

least possible inconvenience. A petitioner may request a conference, but [whether one will be scheduled is a matter lying within the discretion of the department] the scheduling of conferences is at the division's sole discretion. Once a conference has been scheduled, a petitioner may request [from the department a postponement of] that the division postpone the conference. The granting of [such] a postponement [may be conditioned upon the petitioner's agreement to extend] extends the time within which the advisory opinion must be issued.

Section 19. Section 2376.4 is amended to read as follows:

2376.4 Effect of advisory opinions.

(a) An advisory opinion represents an expression of the views of the Commissioner of Taxation and Finance as to the application of law, regulations and other precedential material to the set of facts specified in the petition for advisory opinion. An advisory opinion (including an advisory opinion issued [prior to] before September 1, 1987 by the State Tax Commission)[, shall be] is binding upon the commissioner only with respect to the [person to whom the advisory opinion is rendered] petitioner and only about the facts described in the advisory opinion.

(b) An advisory opinion is limited to the law, regulations and other precedential material in effect as of the date the opinion is issued or for the specified period at issue in the opinion. The conclusions of an issued advisory opinion may be affected by subsequent changes in law or regulations; Tax Appeals Tribunal or judicial decisions; or any other technical memorandum, publication or written document issued by the division announcing a change in policy.

(c) [A previously] An issued advisory opinion found by the commissioner to be in error or not in accord with the current views of the [department] division may be modified or revoked, but [in such an instance] the modification or revocation [shall] will operate prospectively only. Modification or revocation of an advisory opinion is made by a notice to the [petitioner] person to whom the [ruling] advisory opinion was issued [by the

Director of the Taxpayer Services Division, or by such other person to whom the commissioner delegates the authority to issue advisory opinions].

Section 20. Subdivisions (a), (b), and (c) of section 2376.5 are amended to read as follows:

(a) “Issuance.” Advisory opinions will be [mailed] issued to the petitioner within 90 days of receipt of a completed petition for advisory opinion or the latest submission by the petitioner modifying the petition. [The mailing of the advisory opinion shall constitute the rendering of the advisory opinion.] The 90-day period within which an advisory opinion must be rendered may be extended by the Commissioner of Taxation and Finance for a period of up to 30 additional days. [In such case the petitioner will be notified of the extension and the reason therefor.] The period within which an advisory opinion must be issued may also be extended by [written] agreement between the petitioner and the [department] division.

(b) “Contents of [issued] the advisory opinion issued to the petitioner.” An advisory opinion will identify the petitioner to whom it is addressed by name, address, identification number and [year or], where applicable, taxable years or periods involved. It will contain:

(1) a recitation of the facts having a bearing on the issue sought to be resolved;

(2) a discussion of the pertinent statutory provisions, regulations and other precedential material relied upon;

(3) a description of the reasoning upon which the conclusions are based; and

(4) a statement of conclusions. [Such stated] These conclusions will give direct answers, where possible, to the specific questions raised by the petitioner. The discussion contained in the advisory opinion will be set forth with a sufficient degree of detail as to fairly apprise the petitioner of the bases for the conclusions reached.

(c) “[Publications] Publication of advisory opinions.” All issued advisory opinions will be published and made available to the public. [The complete text of the advisory opinion will be published, except that the petitioner’s

identification numbers will be deleted.] Before publication, all names, addresses, and identification numbers will be redacted. Additional information may be redacted if requested in the petition and if, in the division's sole judgment, the information would, for purposes of Public Officers Law § 87.2(d), constitute a trade secret or is information that, if disclosed, would cause substantial injury to petitioner's competitive position. The petitioner must clearly identify the information requested to be redacted in the original petition and the basis for requesting redaction. Published advisory opinions are available upon request and are also posted on the department's Web site.

Section 21. Subdivision (d) of section 2376.5 is repealed.

Dated: Albany, New York
January 30, 2009

Robert L. Megna
Commissioner of Taxation and Finance